IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5885 OF 2005

Shri. Krishna Muthuswamy Konar ...Applicant
Vs.
The State of Maharashtra ...Respondent

Shri. Prakash Naik for the Applicant.
Shri. R. Y. Mirza, for the Respondent.

CORAM : A.S.OKA, J.
DATED : SEPTEMBER 16, 2005.

P.C.:

1. Heard the Advocate appearing for the Applicant and the learned A.P.P. for the State. The offence registered against the Applicant and co-accused is under section 302 read with section 34 of the Indian Penal Code.

2. The Advocate for the Applicant submitted that only the allegation against the Applicant is that he assaulted the Applicant with kicks and fist blows. He stated that the Applicant, if enlarged on bail, is prepared to stay outside the area falling within the jurisdiction of the concerned Police Station. The learned A.P.P. submitted that the common intention on the part of the Applicant and co-accused is very clear. He pointed out that the manner in which brutal offence was taken place, the Applicant is not entitled to be enlarged on bail.

3. I have considered the submissions. The statements of the witnesses indicate that the allegation of assault by using sticks appears to be

against the co-accused Anil and Sanjay. Prima facie it appears from the Post Mortem Notes that the head injury and the fracture is the result of blows given by the co-accused by sticks. The other three injuries are contusion on the right shoulder, a contusion on back and C.L.W. on the right leg. The allegation of the prosecution is that apart from the Applicant other three persons also assaulted the deceased by fist blows and kicks. This is not consistent with the injuries found on the person of the deceased.

4. It is stated that in the year 1999, one offence has been registered against the Applicant and the principal accused Anil under section 307 of the Indian Penal Code. However, the offence is registered six years back. Moreover, the Applicant has offered to remain away from the area falling within the jurisdiction of the concerned Police Station. Considering the peculiar facts and circumstances of the case, the Applicant is entitled to be enlarged on bail.

5. Hence, I pass the following order:

: O R D E R :

i) The Applicant shall be enlarged on bail in connection with C.R. No. I-41 of 2005 registered

with Virar Police Station, District Thane, subject to furnishing a personal bond of Rs. 15,000/- with one or two local sureties in the like amount.

ii) The Bail is granted subject to condition that till conclusion of the trial, the Applicant will not enter area falling within the jurisdiction of Virar Police Station. This order will be given effect only after the Applicant furnishes to the Investigating Officer the detailed address of the place of residence where he proposes to stay after he is enlarged on bail.

iii) The Bail is granted subject to condition that the Applicant will mark the attendance once in a fortnight with the concerned local Police Station till the conclusion of the trial.

iv) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

v) The Applicant shall co-operate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vii) Application is disposed of in the above terms.

viii) The parties to act upon an authenticated copy of this order.

JUDGE